

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-00730 WHA

Plaintiff,

v.

IVAN CERNA, *et al.*,

Defendants.

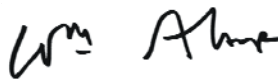
**ORDER DENYING DEFENDANT  
GUILLERMO HERRERA'S  
MOTION TO RESCIND  
DEFENDANT PALMA'S  
SENTENCING CONTINUANCE  
AND VACATING HEARING**

Defendant Guillermo Herrera moves to rescind the sentencing continuance of co-defendant Walter Palma. Defendant Palma's sentencing was continued "because the pre-sentence interview has not occurred and therefore, a pre-sentence report has not been completed in this matter" (Dkt. No. 1546). Defendant Herrera argues that defendant Palma "appears to be a cooperator" and that delaying preparation of defendant Palma's pre-sentence report would deny defendant Herrera access to *Brady* material. While it is true that the Ninth Circuit has held that a criminal defendant has a constitutional right to examine *Brady* material contained within pre-sentence reports, *Brady* does not require the creation of exculpatory evidence not yet in existence. *United States v. Monroe*, 943 F.2d 1007, 1011 n.2 (9th Cir. 1991). Defendant Herrera may not

1 compel the early preparation of defendant Palma's pre-sentence report nor an earlier date for his  
2 sentencing. Defendant Herrera's motion is **DENIED**. The hearing noticed for May 25, 2010, is  
3 **VACATED**.

4  
5 **IT IS SO ORDERED.**

6  
7 Dated: May 6, 2010.



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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE